

~~126-0111~~
116.0.4.4

TRANSMISSION AND TRANSFORMATION FACILITIES AGREEMENT

This Agreement made and entered into as of July 1, 1999, by and between Utility Commission of the City of Henderson, Kentucky, d/b/a Henderson Municipal Power & Light (hereinafter "HMP&L") and Big Rivers Electric Corporation of Henderson, Kentucky (hereinafter "Big Rivers").

WITNESSETH:

Whereas, HMP&L and Big Rivers each own and operate electric transformation and transmission equipment and facilities in Henderson County, Kentucky with which they deliver electric power and energy to their respective electric customers, and

Whereas, economies and reliability in the operation of their respective transformation and transmission facilities can be achieved through the strategic sharing of facilities by the parties, in the manner hereinafter described.

NOW THEREFORE, in consideration of the mutual benefits to be derived by the parties, respectively, through the sharing of transformation and transmission facilities as hereinafter described, it is mutually stipulated, covenanted and agreed as follows:

1. In order to provide back-up service to its Henderson Substation 4, HMP&L will be permitted to install a 161KV radio-controlled, 3-way line switch in Big Rivers' Reid to Henderson 161KV line, at a location acceptable to Big Rivers, with HMP&L to pay all costs of acquiring and installing such added equipment, including the required three terminal relaying protection and associated communication equipment, and to pay all costs of future maintenance and operation thereof. HMP&L will be entitled, through the installation of such 3-way line switch and associated facilities, to use Big Rivers' existing 161KV line for transmission of electric power and energy to and from Henderson Substation No. 4.

2. Big Rivers will be permitted to connect a 161KV transmission line within the HMP&L Henderson Substation 4, with Big Rivers to pay all costs of purchase and installation of such added equipment, and the costs of future maintenance of and operation of same. HMP&L will provide the required substation control room space, at a location suitable to HMP&L, and will provide AC and DC current to Big Rivers for operation of its substation facilities at no costs to Big Rivers.

3. (1) Big Rivers will be permitted to connect a 69 KV line within HMP&L's Henderson Substation 4, with Big Rivers to pay all costs of purchase and installation of all added equipment, and all costs of the future maintenance of same. HMP&L will provide the required 161 KV transmission line capacity, 161 KV-69 KV transformation, substation control room space, at a location suitable to HMP&L, DC and AC current for operation of Big Rivers' substation facilities, all at no cost to Big Rivers. Big Rivers agrees that it will disconnect (open) its 69 KV line when total substation load at HMP&L's Henderson Substation 4 exceeds the capacity of the energized substation transformation.

(2) As an alternative to disconnecting its 69 KV line when transformation capacities are exceed by Big Rivers' use thereof, Big Rivers will be entitled, at its cost, to install additional transformation to HMP&L's Henderson Substation 4 to accommodate the additional transformation loads imposed upon the substation by Big Rivers' 69 KV load. After the addition of such capacity, Big Rivers agrees to disconnect (open) its 69 KV lines that take or receive capacity from the HMP&L's Henderson Substation 4 when Big Rivers's load from the HMP&L Henderson Substation 4 exceeds the energized added transformation capacity, and the total substation load exceeds the capacity of the energized substation transformation.

4. (1) Big Rivers will provide HMP&L required 161 KV transmission line capacity, 161-69 KV transformation, control room space, DC and AC current for operation of substation facilities in the Henderson County Substation, all at no cost to HMP&L. HMP&L agrees to disconnect (open) its 69 KV lines that take or receive capacity from the Henderson County Substation when HMP&L's load from the Henderson County Substation exceeds 25 MVA, and the total substation load exceeds the capacity of the energized substation transformation.

(2) As an alternative to disconnecting (opening) its 69 KV lines, HMP&L will be entitled, at its cost, to install additional transformation to the Henderson County Substation to accommodate the additional transformation loads imposed upon the substation by HMP&L's 69 KV load. After the addition of such capacity, HMP&L agrees to disconnect (open) its 69 KV lines that take or receive capacity from the Henderson County Substation when HMP&L's load from the Henderson County Substation exceeds the energized added transformation capacity plus 25 MVA, and the total substation load exceeds the capacity of the energized substation transformation.

5. The term of this Agreement shall commence on the later of July 1, 1999, or the date on which this Agreement has been signed by both parties, and shall terminate thirty (30) years thereafter ("Termination Date"). This Agreement shall automatically renew and the initial term shall be extended for a term of an additional two (2) years on the Termination Date, and on the last day of each extension of the initial term, unless either party to this Agreement has given the other party written notice of termination at least two (2) years prior to the Termination Date or the last day of any extension of the initial term.

6. Should either party default in the performance of its obligations under the terms of

this Agreement, and such default continue for a period of ninety (90) days following written notice thereof to the defaulting party, the other party may thereupon cure such default at its own expense, and recover the costs and expenses thereof from the defaulting party, including interest at the applicable legal rate and reasonable attorney's fees. The unilateral termination by a party of a material right or license granted herein shall give the non-terminating party the right to terminate this Agreement.

7. If construction or other work undertaken by a party to this Agreement results in a mechanic's or materialman's lien, or a similar lien or encumbrance, being placed or filed against property of the other party, the party responsible for the construction or work shall promptly pay, discharge, or otherwise obtain the release of that lien or encumbrance. Each party shall be responsible for the safety and for the acts of its own agents, representatives and employees when on the premises of the other party pursuant to the right of access granted herein.

8. Each party hereto shall permit the duly authorized representatives and employees of the other party to enter upon its premises for the purpose of reading or checking meters, inspecting, testing, constructing, repairing, renewing or replacing any or all of the facilities and equipment owned by the other party located on such premises, or for the purpose of performing any of the work necessary in order to carry out the provisions of this Agreement. Such entries shall be conducted so as not to interfere with the use of the other party's facilities. Each party agrees to indemnify and hold harmless the party granting access to its premises, its agents, representatives and employees, from and against any and all claims, demands, damages, actions, suits, costs and expenses, including attorneys' fees, arising out of or on account of any condition or situation occurring on or about the premises to which access is granted, any loss or damage to

property or injury or death to persons occurring on or about the premises to which access is granted, and any violation or alleged violation of any law, rule or regulation, which property damage, injury or death or violation or alleged violation is caused by or due to the act or negligence of the party to which access is granted, its agents, representatives or employees, unless the same shall be due to the negligence or willful misconduct of the party granting such access or its authorized agents, representatives or employees.

9. The facilities which are the subject of this Agreement shall be constructed, operated and maintained in accordance with standards and specifications at least equal to those provided by the National Electric Safety Code of the American National Standards Institute, and as required by the Rural Utilities Service and any regulatory authorities having jurisdiction thereof.

10 Neither party hereto shall be considered in default or breach with respect to any obligation of this Agreement if prevented from fulfilling such obligation by reason of an uncontrollable force. Any party unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such disability as soon as reasonably possible. The term uncontrollable force shall mean any force which is not within control of any party to this Agreement, and which by exercise of due diligence and foresight would not have reasonably been avoided, including but not limited to: an act of God, fire, flood, earthquake, explosion, strike, sabotage, an act of the public enemy, civil or military authority, including court orders, injunctions and orders of government agencies having proper jurisdiction, insurrection or riot, an act of the elements, failure of equipment, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers.

11. The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

12. Any payment, written notice, demand or request required or permitted under this Agreement shall be deemed properly given to or served upon the recipient when posted through the regular United States mail affixed with postage and properly addressed as follows:

To BIG RIVERS: President, Big Rivers Electric Corporation
 P.O. Box 24
 Henderson, Kentucky 42419-0024

To HMP&L: General Manager, Municipal Power & Light
 P.O. Box 8
 Henderson, Kentucky 42420

13. In the event that any part of this Agreement is declared illegal or no longer in force by reason of an order issued by a court or regulatory body of competent jurisdiction, all remaining portions of this Agreement which are not affected by such order shall continue in full force and effect. This Agreement shall be interpreted under the laws of the Commonwealth of Kentucky.

14. This Agreement shall be binding upon the parties hereto, their respective successors and assigns. Any sale, assignment or other disposition, by either party to this Agreement, of the transformation and/or transmission facilities through which capacity is provided under the provisions of this Agreement shall be conditioned that the acquirer assume all of the obligations of the party selling, assigning, or disposing of the facilities under this Agreement. No assignment of this Agreement shall be made without the written consent of the other party (except for an assignment by Big Rivers to the United States of America), provided that nothing in this

paragraph shall limit the rights of Big Rivers' creditors under their respective mortgages and loan agreements.

15. The terms of this Agreement shall not be construed as an agreement for partnership, joint venture, association or other relationship whereby either party shall be responsible for the obligations or liabilities of the other party hereto. Neither party shall have the right or the authority to bind the other party to this Agreement to any contract or any other obligation, without specific authority therefor.

16. This Agreement is executed by the undersigned representatives of HMP&L and Big Rivers pursuant to authority granted to them, respectively, by their Board of Directors and/or Commission.

17. The parties agree that the term of the Agreement for Transmission and Transformation Capacity between the parties dated April 11, 1975, which was made coextensive with the operating life of the HMP&L Station Two generating units by the July 15, 1998 Amendments to Contracts Among City of Henderson, Kentucky, City of Henderson Utility Commission and Big Rivers Electric Corporation (the "1975 Agreement"), shall in any event be no shorter than the term of this Agreement. The reference in Sections three and four of this Agreement to 25 MVA is the same 25 MVA referred to in the 1975 Agreement, and does not add an additional 25 MVA to the 25 MVA reference in the 1975 Agreement.

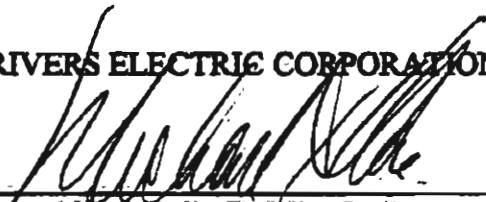
WITNESS the signatures of the parties

CITY OF HENDERSON UTILITY COMMISSION
d/b/a HENDERSON MUNICIPAL POWER & LIGHT

BY: 
B. E. HIGGINSON, CHAIRMAN

Date: 7/20, 1999

BIG RIVERS ELECTRIC CORPORATION

BY: 
MICHAEL H. CORE, PRESIDENT AND CEO

Date: July 2, 1999



Big Rivers
Electric Corporation

File: ~~120.0.11.1~~
116.0.4.4

201 Third Street
P.O. Box 24
Henderson, KY 42419-0024
502-827-2561
www.bigrivers.com

September 24, 1999

Mr. Jeff A. Garner
Acting General Manager
Henderson Municipal Power & Light
P. O. Box 8
Henderson, Kentucky 42419-0008

Subject: 69 kV Line Bay HMP&L Substation 4

Dear Mr. Garner:

Section three of the Transmission and Transformation Facilities Agreement dated July 1, 1999, between Big Rivers and HMP&L provides for Big Rivers connecting a 69 kV line within HMP&L's Henderson Substation 4. Big Rivers wishes to exercise this option and wishes to have this connection in place June 1, 2000. Further, Big Rivers is requesting that HMP&L design, install and maintain the required additional equipment, at Big Rivers' expense, in accordance with the provisions of this letter agreement. Big Rivers will pay all costs of design, purchase and installation of all additional equipment required for the new connection, except that HMP&L will provide the required 161 kV transmission line capacity, 161-69 kV transformation, substation control room space, and the DC and AC current at no cost to Big Rivers in accordance with the July 1, 1999, Transmission and Transformation Facilities Agreement.

Provisions:

- 1) Big Rivers will connect, at its expense, a 69 kV transmission line within HMP&L's Henderson Substation 4 onto a line bay to be designated by HMP&L.
- 2) HMP&L will perform, or cause to be performed, all engineering, purchasing, and installation of the required equipment, wiring, structural steel, and bus work needed to provide a new 69 kV line bay for the connection of Big Rivers' 69 kV line as provided for in the terms and conditions of the Transmission and Transformation Agreement dated July 1, 1999, between Big Rivers and HMP&L. The total cost of which is currently estimated to be \$300,000.
- 3) HMP&L will commence immediately the engineering, design, equipment purchase, etc. in a timely manner as to allow for a project completion date of June 1, 2000. HMP&L will attempt, on a best-efforts basis, to meet Big Rivers' time schedule. However, HMP&L will

have no liability whatsoever to Big Rivers if it fails to complete its performance under this letter agreement by June 1, 2000.

- 4) HMP&L will provide to Big Rivers a monthly update of the project schedule including a cost to date that will demonstrate that the project is progressing at a schedule and at a cost which will meet the desired completion date, and at a cost not to exceed the estimated cost in 2) above without prior approval from Big Rivers.
- 5) HMP&L will utilize its usual engineering, purchasing, installation, testing and start-up procedures in the performance of this project, all subject to Big Rivers' review and approval. Big Rivers is to be given the right of a timely review of all appropriate drawings and specifications prior to their release for bidding.
- 6) Big Rivers, as owner of all purchased materials and equipment, retains the right of approval of the purchase of all materials and equipment to ensure conformity with its (RUS's) standards and specifications.
- 7) Big Rivers will reimburse HMP&L for all cost and expenses incurred in conjunction with this project up to the amount indicated in the cost estimate. HMP&L will receive concurrence from Big Rivers prior to committing for material or labor in excess of the cost estimate, and Big Rivers will be responsible for only those amounts above the cost estimate that it concurs with in writing prior to purchase. Reimbursement will be made within 15 business days after receiving an invoice from HMP&L. HMP&L will have no obligation to provide any labor, materials and/or services in connection with this project unless Big Rivers has agreed to reimburse HMP&L for its costs expended therefor.
- 8) Big Rivers will own all equipment added under the provisions of this letter agreement and will be responsible for their timely replacement as needed until such time as the Big Rivers' 69 kV line is permanently removed from the Henderson Substation 4 according to the provisions of the July 1, 1999, Agreement.
- 9) HMP&L will perform the required maintenance of all the equipment added under this letter agreement and invoice Big Rivers the reasonable cost of such maintenance. Big Rivers will be given by HMP&L a one-week notice of its intent to perform maintenance on the equipment, and Big Rivers will have the right to witness all maintenance work. Big Rivers, at its discretion, will have the right to perform the maintenance work of the equipment it owns that is located in HMP&L substation.
- 10) Big Rivers' 69 kV interconnection will be made to the existing Substation 2 Bay after construction of a new Bay is completed, and the existing Transformer and Sub 2 Line terminations have been relocated. Existing equipment, materials, and controls will be utilized for the Big Rivers' interconnection.

- 11) Big Rivers will provide all labor and materials, up to but not including the take off steel structure, required to connect its 69 kV line to the designated line bay per the terms of the July 1, 1999, Agreement.
- 12) HMP&L will provide 24-hour SCADA control service to Big Rivers, at no cost, to control the breakers in the line bay on which Big Rivers' 69 kV line will terminate. This service is to be of a similar nature as Big Rivers is currently providing HMP&L for its transmission lines that currently terminate in Big Rivers' substations.
- 13) Big Rivers will be granted, upon request, reasonable access to its monitoring and control equipment for purposes of inspection, maintenance and repair.

Signature of the parties below witness to their concurrence with all the provisions of this letter agreement.

BIG RIVERS ELECTRIC CORPORATION

BY: 

MICHAEL H. CORE, PRESIDENT AND CEO

DATE: 9/24/99

CITY OF HENDERSON UTILITIES COMMISSION
d/b/a HENDERSON MUNICIPAL POWER & LIGHT

BY: 

B. E. HIGGINSON, CHAIRMAN

DATE: 9/28/99